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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
097090, 730	06/18/98	SUGIYAMA	T PH-254782

IM52/0913
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EXAMINER	
TUNG, T	
ART UNIT	PAPER NUMBER
1743	27

DATE MAILED: 09/13/01

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☐ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run _____ or continues to run _____ from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).
- ☒ Applicant's response to the final rejection, filed 8-9-01 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:
1. ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - ☐ They raise new issues that would require further consideration and/or search. (See Note).
 - ☐ They raise the issue of new matter. (See Note).
 - ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
3. ☒ Upon the filing of an appeal, the proposed amendment ☒ has been will be entered ☐ will not be entered and the status of the claims will be as follows:
- Claims allowed: none
- Claims objected to: none
- Claims rejected: 1, 2, 4, 6, 7, 10, 11, 18-22 (all)
- However;
- ☒ Applicant's response has overcome the following rejection(s): 35 USC 112, ¶ 1 and ¶ 2
4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because _____
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.
- ☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.
- ☒ Other see attached PTO-413

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Applicant contends that there is no basis to conclude that the AKP 53 sample in the Firing Temperature graph of the Sumitomo publication is a typographical error and is actually the same as the AKP 50 sample listed in the table.

First, there is no AKP 53 sample listed in the table, while all the other samples in the graph are listed in the table. Second, AKP 50 of the table is not shown in the graph. Third, all sample numbers set forth in the table or the graph end in zero or 5 except AKP 53, which is an odd number. Fourth, 53 is similar to 50. Fifth, why would a graph be presented showing a sample for which no information is given? Thus, it is reasonable to presume that AKP 53 and AKP 50 are actually one and the same.

Since the publication in question was cited by applicant himself to support his position, it is up to applicant to rebut this reasonable presumption of the publication's contents.

Applicant contends that the mean particle size of AKP 3000 is actually 0.55, not 0.66, as shown by the non-faxed copy of the publication.

The 0.55 value is a mean particle size, and is very close to the 0.57 value of AKP 20. AKP 3000 has a wider range of particle distribution than AKP 20, and that may be the reason why AKP 3000 has a fired density lower than AKP 20. As conceded by applicant at the top of page 4 of his Jan. 25, 2001 response, a wide range particle distribution tends to promote lower density and higher porosity. It should be noted that applicant's claim language does not place any limitation on the particle size, as to whether it is a mean particle size or otherwise.

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In the Firing Temperature graph, all the samples AKP 20, AKP 30, AKP 53 (50) other than AKP 3000 support the proposition that larger particle size tends to yield lower density and higher porosity. The one slight deviation, sample AKP 3000, can be explained by its wider particle distribution range. It would be reasonable to conclude that if AKP 3000 had the same particle distribution range as AKP 20, AKP 3000 would yield a higher density than the latter. Therefore, the Sumimoto publication is considered to support the examiner's position rather than applicant's position.

As for the Sumicorundum article, even though the discussion on page 2 of the translation tends to suggest that a larger particle size can yield higher density, it is clear from the discussion at page 1, second paragraph from the bottom, of the translation that that result is achieved by having a narrow range of particle size.

Applicant also argues that in Suzuki, the porous coating layer in question is an outer layer and has a different function than the layer in question in Mase.

The examiner still considers the particular function of the Suzuki layer to be irrelevant. At the very least, it would not negate the obviousness of the Mase/Suzuki combination.

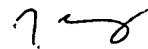
The prior art rejection is adhered to.

The examiner can be reached at 703-308-3329. His supervisor Jill Warden can be reached at 703-308-4037. Any general inquiry should be directed to the receptionist at 703-308-0661. A fax number for TC 1700 is 703-305-3599.

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Ta Tung

Primary Examiner

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